

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)	<i>FILED IN CAMERA AND UNDER</i>
)	<i>SEAL</i> pursuant to 31 U.S.C.
Plaintiff,)	§ 3730 – FEDERAL FALSE
)	CLAIMS ACT
<i>ex rel.</i> WILLIE BRITTON,)	
)	
Plaintiff-Relator,)	CIVIL ACTION NO.
)	
v.)	
)	
LINCARE, INC.)	<hr style="width: 80%; margin-left: 0;"/>
)	
Defendant.)	

ORIGINAL COMPLAINT

1. On behalf of the United States of America pursuant to the *qui tam* provisions of the Federal False Claims Act (“FCA”), 31 U.S.C. §§ 3729-3733, plaintiff-relator WILLIE BRITTON files this complaint against defendant LINCARE INC(“LINCARE”).

2. This action concerns LINCARE use of a service representative, i.e. a delivery person, to perform certain portions of the explanation and use of a nebulizer that according to internal LINCARE documents should be performed by “a clinician only”.

3. LINCARE bills medicare for the delivery of oxygen services

4. Upon information and belief, part of that billing includes work performed in the set up and explanation of nebulizer use by a Lincare Health

Care Specialist, who according to the job duties, “Provides patient education as an intricate part of the patient care.”

5. That patient education work with respect to Nebulizers is being completed by LINCARE’s equipment delivery representative.

JURISDICTION AND VENUE

6. This action arises under the federal False Claims Act, as amended, 31 U.S.C. § 3729, *et seq.* This Court has subject matter jurisdiction over this action pursuant to 31 U.S.C. §§ 3732(a) and 3732(b), and 28 U.S.C. §§ 1345 and 1367.

7. Court has personal jurisdiction over the defendant.

8. Venue is proper in this district under 31 U.S.C. § 3732(a). At least one defendant can be found, resides, or transacts business within this district, or at least one act proscribed by 31 U.S.C. § 3729 occurred within this district.

THE PARTIES

The Plaintiff-Relator

9. The plaintiff is Willie Britton acting in the capacity as relator for the United States pursuant to 31 U.S.C. § 3730(b) (the “Relator”). Britton is employed as a service representative for LINCARE.

10. Britton is a citizen of the United States and the State of Alabama.

The Defendant

11. LINCARE is a publicly traded oxygen respiratory care company headquartered in Clearwater Florida.

GROUND'S FOR THIS ACTION

12. As a service representative Britton performed certain portions of nebulizer set up that should be done by a Health Care Specialist (i.e a Licensed Practical Nurse, Registered Respiratory Therapist, or Certified Respiratory Therapist)

13. As part of his job assignments, Britton completes a LINCARE Aerosol Therapy Device Orientation check list. That check list mandates that the explanation of the doctor's prescription is to be performed by the "clinician only". Additionally, the explanation and demonstration of the proper breathing technique using the nebulizer is to be performed by the "clinician only".

14. A nebulizer will involve the use of prescription medication.

15. These clinician designated tasks are being performed by the Britton, the delivery man, who has no respiratory training or certifications.

16. To the extent any portion of the Medicaid bill provides for patient education that LINCARE is supposed to be providing these specific activities being completed by the by unlicensed employee.

17. For Medicaid patients, Britton explained the doctor's prescription and demonstrated the techniques to use during breathing treatment for operating nebulizers.

18. According to internal company documents this work should only be completed by a "clinician only" which Britton most certainly is not.

19. The Medicaid program provides medical benefits to qualifying low-income individuals and seniors who have no medical insurance or inadequate medical insurance. The Federal government establishes general guidelines for Medicaid benefits. However, specific eligibility requirements to receive Medicaid benefits, as well as the type and scope of services provided, are determined by the participating states. The Medicaid program in each state is financed with monies appropriated by the United States Congress and from the state itself.

20. LINCARE has many more clients in the Birmingham area than the single Licensed HealthCare Representative employed by LINCARE in this market can serve forcing reliance on the delivery personnel to complete the educational "clinician only" tasks.

COUNT I
(Violation of 31 U.S.C. § 3729(a)(1):
Submission of a False or Fraudulent Claim for Payment)

21. Plaintiff-Relator WILLIE BRITTON hereby re-alleges and incorporates by reference paragraphs 1 through 19 of this Complaint.

22. This is a claim for damages and civil money penalties under the False Claims Act, 31 U.S.C. § 3729, *et seq.*, against defendant LINCARE for knowingly presenting or causing to be presented false or fraudulent claims for payments from the United States, through Medicare.

23. These claims were false or fraudulent because the defendant induced the purchase of a product that was, based on its concealment of material information as to who was performing the “clinician only” tasks.

24. LINCARE pays the delivery personnel significantly less than licensed personnel.

25. Defendant LINCARE presented or caused to be presented these claims for payment to the United States, knowing such claims were false or fraudulent.

26. By virtue of the false or fraudulent claims presented or caused to be presented by defendant LINCARE, the United States has suffered actual damages in an amount to be determined at trial, is entitled to recover three times the amount by which it was damaged, plus civil money penalties of not less than \$5,000 and not more than \$10,000 for each of the false or fraudulent claims presented or caused to be presented, plus interest, attorney’s fees, and costs.

COUNT II
(Violation of 31 U.S.C. § 3729(a)(2):
Creation or Use of a False or
Fraudulent Statement to Obtain Payment)

27. Plaintiff-Relator Britton hereby re-alleges and incorporates by reference paragraphs 1 through 25 of this Complaint.

28. Defendant LINCARE knowingly made, used, or caused to be made or used, false or fraudulent statements and certifications to get a false or fraudulent claim allowed or paid by the United States, in violation of 31 U.S. C. § 3729(a)(2).

29. The United States has been damaged by the creation or use, or both, of false statements to obtain fraudulent payments or approval by defendant LINCARE in an amount to be proven at trial.

30. The United States has suffered actual damages and is entitled to recover three times the amount by which it was damaged, plus civil money penalties of not less than \$5,000 and not more than \$10,000 for each of the fraudulent claims presented or caused to be presented, plus interest, attorney's fees, and costs.

PRAYER FOR RELIEF BY PLAINTIFF-RELATOR

WHEREFORE, Plaintiff-Relator WILLIE BRITTON respectfully prays that:

A. With respect to Counts I-II, judgment be entered in favor of Plaintiff-Relator Britton, on behalf of the United States and against defendant LINCARE damages sustained by the United States as provided by the False Claims Act, for civil money penalties of not less than \$5,000 and not more than \$10,000 for each of the false or fraudulent claims presented or caused and false or fraudulent records, statements, or certifications presented, plus interest, attorney's fees, and costs;

B. Such other and further relief and benefits be ordered as the cause of justice may require.

JURY DEMAND

PLAINTIFF DEMANDS A TRIAL BY A STRUCK JURY.

/s/Lee Winston

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Roderick T. Cooks

Courtney L. Calhoun

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